

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LETICIA LOPEZ,	§
	§ No. 717, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0912002189
	§
Plaintiff Below-	§
Appellee.	§

Submitted: June 21, 2011

Decided: August 8, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 8th day of August 2011, upon consideration of the appellant's brief pursuant to Supreme Court Rule 26(c), her attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) The defendant-appellant, Leticia Lopez, was found guilty by a Superior Court jury of Offensive Touching of a Law Enforcement Officer.¹ She was sentenced to 1 year of Level V incarceration, with credit for 4 days previously served, to be suspended for 1 year of Level II probation. This is Lopez's direct appeal.

¹ The Superior Court granted the defense motion for judgment of acquittal on the charges of Conspiracy in the Second Degree and Resisting Arrest. Lopez was found not guilty of Disorderly Conduct.

(2) Lopez's counsel has filed a brief and a motion to withdraw pursuant to Rule 26(c). The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: a) the Court must be satisfied that defense counsel has made a conscientious examination of the record and the law for claims that could arguably support the appeal; and b) the Court must conduct its own review of the record in order to determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.²

(3) Lopez's counsel asserts that, based upon a careful and complete examination of the record and the law, there are no arguably appealable issues. By letter, Lopez's counsel informed Lopez of the provisions of Rule 26(c) and provided her with a copy of the motion to withdraw, the accompanying brief and the complete trial transcript. Lopez also was informed of her right to supplement her attorney's presentation. Lopez presented four issues for this Court's consideration. The State has responded to the position taken by Lopez's counsel as well as the issues raised by Lopez and has moved to affirm the Superior Court's judgment.

² *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

(4) Lopez raises four issues for this Court's consideration. She claims that a) she did not have the benefit of witness testimony at trial; b) she did not have an interpreter at trial; c) the video played for the jury was incomplete; and d) the jury was improperly instructed by the judge.

(5) The evidence presented at trial was as follows. At approximately 11:00 p.m. on December 3, 2009, two New Castle County police officers were on patrol on Newport Pike and noticed a car with a loud muffler. The car turned into the Silview Estates development. The officers testified that the car turned into the neighborhood suddenly after their police car came into view. The officers checked the license number of the car and ascertained that the owner lived in the Silview Estates development. They entered the development and found the car parked at one of the residences.

(6) When the officers arrived at the residence, a young man whom they recognized as the driver of the car stepped outside. The officers testified that, when they tried to speak with him, he ran to the back yard. The officers ran after him. As the officers attempted to take the young man into custody, Lopez, his mother, stepped into the back yard through the back door. Lopez's sister, Lopez's husband and Lopez's other son all came out of the house as well. Lopez yelled to her husband to call 911. By this time, the situation had gotten out of control, with the officers trying to subdue the

young man and, according to the officers, with Lopez and her sister grabbing their arms and pulling them away. Although the officers testified that they identified themselves as police officers, Lopez testified at trial that she was unaware of who they were. Moreover, she denied having touched either of the officers. As the situation continued to escalate, the officers sent out an emergency call for back-up. Ultimately, all of the adults on the scene were arrested. Lopez's younger son had taken a video of the incident, which was played, in part, for the jury.

(7) Lopez's first claim is that she did not have the benefit of witness testimony at trial. However, Lopez does not identify what missing testimony she believes would have assisted her case. The trial transcript reflects that both Lopez and her husband testified that they were unaware the men attempting to secure their son were police officers and that none of their family members attempted to pull the officers off of him. As such, it is apparent that Lopez's version of events was fully presented to the jury. In the absence of any evidence of prejudice due to an inability to present specific witness testimony, we conclude that Lopez's first claim is without merit.

(8) Lopez's second claim is that she did not have an interpreter at trial. The record reflects that neither Lopez nor her attorney requested the

services of an interpreter for purposes of trial. Lopez does not assert that she did not understand the proceedings or allege in what way her case was prejudiced by the lack of an interpreter. The sentencing transcript reflects that Lopez requested an interpreter during the sentencing proceedings. The trial judge, surprised at the request, asked Lopez's counsel for an explanation. Defense counsel could not explain the request, noting that his client had lived in Delaware since 1991, was able to communicate with him during trial and had never before requested the services of an interpreter. In the absence of any evidence of prejudice as the result of the lack of an interpreter at trial, we conclude that Lopez's second claim also is without merit.

(9) Lopez's third claim is that the video played for the jury was incomplete and, specifically, that comments made to her younger son were absent. The trial transcript reflects that the video shown to the jury was redacted as agreed upon by counsel. It further reflects that statements made by Lopez's younger son were redacted because he was not called as a witness. Lopez has not stated how the material redacted from the video would have assisted her at trial. In the absence of any evidence of prejudice as the result of the redactions to the video, we conclude that this claim, too, is without merit.

(10) Lopez's fourth, and final, claim is that the jury was instructed improperly. Lopez does not identify any particular instruction that she believes was improper, nor does she identify any instruction that she believes should have been given, but was not. The instructions that were given to the jury were agreed to by both the prosecutor and defense counsel. The purpose of jury instructions is to correctly state the law so as to enable the jury to carry out its function.³ Jury instructions must be reasonably informative and not misleading.⁴ There is no evidence in this case that the jury instructions were misleading or did not serve their proper purpose in enabling the jury to carry out its function. Therefore, we conclude that Lopez's fourth claim also is without merit.

(11) This Court has reviewed the record carefully and has concluded that Lopez's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that Lopez's counsel has made a conscientious effort to examine the record and the law and has properly determined that Lopez could not raise a meritorious claim in this appeal.

³ *Corbitt v. Tatagari*, 804 A.2d 1057, 1062 (Del.2002).

⁴ *Id.*

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice